

detainees at Guantanamo. In any event, the Supreme Court's recently announced determination to review cases involving the Guantanamo detainees may end up making commissions, which the administration delayed in convening, no longer possible.

There have been several proposals for a new adjudicatory framework, notably by Andrew C. McCarthy and Alykhan Velshi of the Center for Law & Counterterrorism, and by former Deputy Attorney General George J. Terwilliger. Messrs. McCarthy and Velshi have urged the creation of a separate national security court staffed by independent, life-tenured judges to deal with the full gamut of national security issues, from intelligence gathering to prosecution. Mr. Terwilliger's more limited proposals address principally the need to incapacitate dangerous people, by using legal standards akin to those developed to handle civil commitment of the mentally ill.

These proposals deserve careful scrutiny by the public, and particularly by the U.S. Congress. It is Congress that authorized the use of armed force after Sept. 11—and it is Congress that has the constitutional authority to establish additional inferior courts as the need may be, or even to modify the Supreme Court's appellate jurisdiction.

Perhaps the world's greatest deliberative body (the Senate) and the people's house (the House of Representatives) could, while we still have the leisure, turn their considerable talents to deliberating how to fix a strained and mismatched legal system, before another cataclysm calls forth from the people demands for hastier and harsher results.

Mr. KYL. Mr. President, the only point I am making is that while it is possible to try these people in Federal court, it is very difficult. It frequently results in the disclosure of information that we don't want disclosed. I think it would be far better, if we can, to try these people in military commissions. The President has now said he would go forward with military commissions—modified to some extent—and I think that is a good thing for the trial of those who are suitable for that action.

The President also noted, of course, that there are going to be a lot of these terrorists who cannot be tried but are dangerous and need to be held, and the U.S. Supreme Court has affirmed the appropriateness of holding such people until the end of hostilities. The President has indicated that he would, in fact, do that.

I think there is no question, therefore, that we will be holding some of these people. The question is where best to do it. This is the nub of the argument that my colleague and fellow whip, the Senator from Illinois, and I have been having long distance. I relish the opportunity when we can both get our schedules straight to literally have a debate back and forth. I think it is an important topic.

I see now other colleagues are here, and so I will make one final point, and then I hope we can continue in this debate because I think it is a better policy to keep Guantanamo open and keep these prisoners there than to try to find some alternative.

Let me cite one statistic, and then make my primary point. According to the numbers I have—and I would be

happy to share these with my colleague from Illinois with respect to the slots available in our supermax facilities, if I can find it—there are about 15 high security facilities which were built to hold 13,448 prisoners. Those facilities currently house more than 20,000 inmates.

The bottom line is that is not necessarily a supersolution either.

Did my colleague have a quick comment? I want to make my main point.

OK, thank you.

Here is my main point. There are those very credible people who say: Well, this is a recruitment symbol. Guantanamo prison is a recruitment symbol. I have no doubt they are right, it is a recruitment symbol. Several questions, however, are raised by that observation.

The first question is, even if it is false that there has been torture at Guantanamo prison—obviously, terrorists can believe falsehoods—should we take action based upon that falsehood?

The next question I think has to be asked is, does this mean, then, that other terrorist recruiting symbols need to be eliminated by the United States?

The third question is, would that eliminate their terrorism?

What is it exactly that animates these terrorists? Gitmo didn't even exist before some of the worst—in fact, before all of the worst terrorist attacks on the United States or U.S. facilities abroad. There was no Gitmo prior to 9/11. Yet we had all of the various attacks that occurred throughout the world leading up to 9/11 and 9/11 itself. They didn't need another reason to hate America. They didn't need another reason to be able to recruit people. They have all the reasons they can dream up.

I think the key reasons are that they fundamentally disagree with our way of life, and they believe they have an obligation, through jihad, to either get the infidels—that is all of us who don't agree with them—to bend to their will or to do away with us because they don't like our way of life. They do not like the fact that we have the culture we have. They do not like the fact that we give equal rights to women or that we have a democracy. There are a lot of things they hate about the Western World generally and about our society in particular.

These are obviously recruiting symbols and recruiting tools. Are we to do away with these things in order to please them? And even if we did, what effect would it have on their recruiting? Do you think they would then say: OK, great. You have closed Guantanamo prison, you have taken away women's rights, you are halfway home to us not recruiting anybody or terrorizing you anymore. If you will only get rid of the vote and institute Sharia law, we can start talking here.

I don't think that is the way they are going to act. They are going to have grievances against us no matter what. For us to assume we have to change

our policies, to change what we think is in our best interests, simply to assuage their concerns because maybe they do use this as a recruiting tool, I think is to, in effect, hold our hands up and say: In the war against these Islamist terrorists, we have no real defenses because anything we do is going to make them unhappy. It is going to be a recruiting tool. After all, we wouldn't want to give them a recruiting tool.

I do not think it is too much of an exaggeration to make the point I made. One might say: Obviously, we are not going to give up our way of life. They are going to have to deal with that. Well, then they are going to keep recruiting. But we could at least get rid of Guantanamo prison. That would at least get rid of one thorn. Would it make a difference? Nobody believes it would make a difference.

The key point I make is—and this is just a disagreement reasonable people are going to have, I guess—I think Guantanamo is the best place to keep these people. My friend from Illinois thinks there are alternatives that are better and that, under the circumstances, we should make the change. Again, I observe that the American people seem to be on the side of not closing it down, and I do not think it all has to do with fear. I think it has to do with the commonsense notion that this is not going to remove terrorist recruiting. If it is better for us to keep them there, we might as well do that.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I ask consent to speak in morning business for 5 minutes. I see other Members are on the floor and I will finish after 5 minutes and yield the floor on this issue we have debated.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. I respect my colleague from Arizona and I respect the fact that we are on the floor together. This is a rarity in the Senate, where people with opposing viewpoints actually arrive at the same moment and have a chance at least to exchange points of view if not have more direct communication. I would say, as follows: I don't know what motivates the mind of a terrorist. I think I have some ideas and my colleague does as well. I do not know that we will ever be able to save every soul when it comes to those who are inclined toward terrorism. Let's face reality, it is like crime in this country. We all would like to see it go away, but we know, intuitively, there are some people who are bad people and do bad things and need to pay the price, and I think the same is true for terrorism.

But when President Obama goes to Cairo, Egypt, and appears to speak to the Islamic world about this new administration and its new approach when it comes to dealing with Islam and says as part of it that the United